

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

ALICIA CRABTREE, as
Power of Attorney for
GENE HARRISON,

Plaintiff,

v.

Civil Action No. 3:15-cv-13318
Judge _____

Removed From Circuit Court of
Cabell County, No. 15-C-519

SEVENTEENTH STREET ASSOCIATES, LLC d/b/a
HUNTINGTON HEALTH AND REHABILITATION CENTER;
SMV HUNTINGTON, LLC;
SSC HUNTINGTON OPERATING COMPANY, LLC
SSC SUBMASTER HOLDINGS, LLC;
SSC EQUITY HOLDINGS MT, LLC;
SAVASENIORCARE, LLC; and
SSC SPECIAL HOLDINGS, LLC,

Defendants.

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendants SSC Submaster Holdings LLC, SSC Special Holdings LLC, SavaSeniorCare, LLC, SSC Equity Holdings MT LLC, and SSC Huntington Operating Company LLC (“Removing Defendants”), by and through their undersigned counsel, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446(b) and (c), respectfully file this Notice of Removal to the United States District Court for the Southern District of West Virginia, and for grounds of this Notice of Removal, state:

I. NATURE OF REMOVED ACTION

1. This suit, originally filed in the Circuit Court of Cabell County, West Virginia, is an action by Plaintiff against Defendants to recover damages (“State Court Action”).

II. TIMELINESS OF REMOVAL

2. This Notice of Removal is timely because Plaintiff filed her Complaint in the State Court Action on July 20, 2015. The West Virginia Secretary of State received service of the Summons and Complaint on behalf of each of the Removing Defendants on August 21, 2015. True and correct copies of the Summons and Complaint served upon Removing Defendants in the State Court Action are attached hereto as **Exhibit A**.

3. As required by 28 U.S.C. § 1446(b), this Notice of Removal is filed in this Court within 30 days after the receipt by Removing Defendants of a copy of Plaintiff's Complaint in the State Court Action.

4. All of the Defendants in the State Court Action have joined in this Notice of Removal, except Defendant SMV Huntington, LLC which has not been served with process. *See* 28 U.S.C. § 1446(b)(2)(A). If and when SMV Huntington, LLC is served with process, it will consent to removal of this action.

III. VENUE IS PROPER

5. This Court is a proper venue pursuant to 28 U.S.C. § 1391(b)(2) because the alleged events giving rise to Plaintiff's claims occurred in, and the property that is the subject of this action is situated in, the Southern District of West Virginia, Huntington Division.

IV. BASIS OF REMOVAL

6. This Court has subject-matter jurisdiction based on diversity jurisdiction pursuant to 28 U.S.C. § 1332.

A. Citizenship of Plaintiff

7. Plaintiff and Gene Harrison are citizens of West Virginia. (*See* Ex. A, Compl.

¶¶ 1-2.)

B. Citizenship of Defendants

8. Removing Defendant SavaSeniorCare, LLC is a limited liability company organized under the laws of Delaware. As a limited liability company, SavaSeniorCare, LLC's citizenship is determined by the citizenship of its members. *See Gen. Tech. Applications, Inc. v. Exro Ltda.*, 388 F.3d 114, 120 (4th Cir. 2004). SavaSeniorCare, LLC has a single member, non-party Proto Equity Holdings, LLC, which also is a Delaware limited liability company. Proto Equity Holdings, LLC likewise has a single member, which is non-party Terpax, Inc., a Delaware corporation with its principal place of business in Georgia. Accordingly, SavaSeniorCare, LLC is deemed to be a citizen of the States of Delaware and Georgia.

9. Removing Defendant SSC Equity Holdings MT LLC is a limited liability company organized under the laws of Delaware. Its sole member is non-party Master Tenant Parent Holdco II, LLC, which is itself a Delaware limited liability company. Master Tenant Parent Holdco II, LLC's sole member is SavaSeniorCare, LLC. Because SavaSeniorCare, LLC is a citizen of the States of Delaware and Georgia, SSC Equity Holdings MT LLC also is deemed to be a citizen of those States.

10. Removing Defendant SSC Special Holdings LLC is a limited liability company organized under the laws of Delaware. Its sole member is non-party Special Holdings Parent Holdco, LLC, which also is a Delaware limited liability company. Special Holdings Parent Holdco, LLC's sole member is SavaSeniorCare, LLC. Because SavaSeniorCare, LLC is a citizen of the States of Delaware and Georgia, SSC Special Holdings LLC also is deemed to be a citizen of those States.

11. Removing Defendant SSC Submaster Holdings LLC no longer exists. On October 11, 2013, SSC Submaster Holdings LLC merged with and into non-party SSC Equity Holdings, LLC. Prior to the merger, SSC Submaster Holdings LLC was a limited liability

company organized under the laws of Delaware. Its sole member was SSC Equity Holdings, LLC. SSC Equity Holdings, LLC's sole member is non-party Master Tenant Parent Holdco, LLC, which also is a Delaware limited liability company. Master Tenant Parent Holdco, LLC's sole member is SavaSeniorCare, LLC. Because SavaSeniorCare, LLC is a citizen of the States of Delaware and Georgia, while SSC Submaster Holdings LLC was in existence, it also was a citizen of the States of Delaware and Georgia.

12. Removing Defendant SSC Huntington Operating Company LLC is a limited liability company organized under the laws of Delaware. Its sole member is non-party West Virginia Holdco, LLC, which also is a Delaware limited liability company. West Virginia Holdco, LLC's sole member is Removing Defendant SSC Equity Holdings MT LLC. Because SSC Equity Holdings MT LLC is a citizen of the States of Delaware and Georgia, SSC Huntington Operating Company LLC also is deemed to be a citizen of those States.

13. Defendant SMV Huntington, LLC is a limited liability company organized under the laws of Delaware. Its ultimate members are citizens of the States of New York, New Jersey and Florida. Accordingly, SMV Huntington, LLC also is deemed to be a citizen of those States.

14. Defendant Seventeenth Street Associates LLC d/b/a Huntington Health and Rehabilitation Center ("Facility") is a limited liability company organized under the laws of West Virginia. Its sole member is SSC Huntington Operating Company LLC. Because SSC Huntington Operating Company LLC is a citizen of the States of Delaware and Georgia, Seventeenth Street Associates LLC also is deemed to be a citizen of those States.

C. Amount-In-Controversy

15. Plaintiff's Complaint asserts three causes of action based on allegedly deficient care that Defendants purportedly rendered to Gene Harrison while he was a resident at the Facility, from April 3, 2014 to April 21, 2014. (Compl. ¶ 44.) In Count I, Plaintiff seeks

damages from Defendants pursuant to West Virginia *Code* § 55-7-8a, *et seq.*, and West Virginia *Code* § 16-5C-15 *et seq.* (Compl. ¶¶ 55-59.) In Count II, Plaintiff alleges that Defendants are liable for negligence pursuant to West Virginia *Code* § 55-7B-1 *et seq.* (Compl. ¶¶ 60-65.) In Count III, Plaintiff alleges that Defendants committed common law negligence and “reckless misconduct.” (Compl. ¶¶ 66-70.)

16. Plaintiff alleges that, as a result of Defendants’ provision of substandard care, Mr. Harrison “suffered skin breakdown and malnutrition, physical injuries, mental anguish, physical pain and suffering and incurred medical treatment and expenses for such injuries and was deprived of adequate and appropriate treatment and healthcare . . .” (Compl. ¶ 59.) Plaintiff’s Complaint seeks a plethora of damages, including, *inter alia*, “all damages allowable under West Virginia law, Attorney’s Fees, and Punitive Damages as well as any other items and relief that the Court sees fit to award . . .” (Compl. at 17.)

17. Although Plaintiff’s Complaint does not allege an amount-in-controversy, the value of this matter in dispute exceeds \$75,000, exclusive of interest and costs, as required by 28 U.S.C. § 1332(a). *See Ellenburg v. Spartan Motors Chassis, Inc.*, 519 F3d 192, 200 (4th Cir. 2008) (“[J]ust as a plaintiff’s complaint sufficiently establishes diversity jurisdiction if it alleges that . . . ‘[t]he matter in controversy exceeds, exclusive of interest and costs, the sum specified in 28 U.S.C. § 1332,’ so too does a removing party’s notice of removal sufficiently establish jurisdictional grounds for removal by making jurisdictional allegations in the same manner.” (internal citations omitted)).

18. Removing Defendants have complied with all provisions of 28 U.S.C. § 1446 governing the process for removal.

19. Therefore, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), and the State Court Action is properly removable.

20. As required by 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Removing Defendants will provide written notice of this filing to Plaintiff and the Clerk of the Circuit Court of Cabell County, West Virginia where the State Court Action was pending.

21. Removing Defendants submit this Notice of Removal without waiving any defenses to the claims asserted by Plaintiff.

IV. STATEMENT OF CONSENT TO REMOVAL

22. With respect to removal under 28 U.S.C. § 1441 and in accordance with 28 U.S.C. § 1446(b)(2)(A), *Mayo v. Bd. of Educ.*, 713 F.3d 735, 742 (4th Cir. 2013) and *Stevens v. Thornsberry*, Civil Action No. 2:13-cv-31719, 2014 U.S. Dist. LEXIS 112020 (S.D. W. Va., Aug. 13, 2014), all Defendants consent to removal, except for Defendant SMV Huntington, LLC, which has not received service of process. However, if and when SMV Huntington, LLC is served with process, it will consent to removal of this action.

WHEREFORE, Removing Defendants pray this Honorable Court accepts jurisdiction of said action.

Respectfully submitted this 18th day of September, 2015.

**SSC SUBMASTER HOLDINGS LLC,
SSC SPECIAL HOLDINGS LLC,
SSC EQUITY HOLDINGS MT LLC,
SSC HUNTINGTON OPERATING COMPANY
LLC,
SMV HUNTINGTON, LLC, and
SAVASENIORCARE, LLC,**

By Counsel

/s/ John J. Meadows
John J. Meadows (WVSB #9442)
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*Counsel for SSC Submaster Holdings LLC,
SSC Special Holdings LLC, SavaSeniorCare, LLC,
SSC Equity Holdings MT LLC, SMV Huntington
LLC, and SSC Huntington Operating Company
LLC.*

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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the NOTICE OF REMOVAL filed electronically with the Clerk of the Court this 18th day of September, 2015, to be served by operation of the Court's electronic filing system upon the following on 18th day of September, 2015, and which I also served by US Mail, first class postage prepaid, on:

Andrew L. Paternostro, Esq. and
Jeff D. Stewart, Esq.
The Bell Law Firm, PLLC
PO Box 1723
Charleston, W. Va. 25326
304-345-1700
Counsel for Plaintiff

/s/ John J. Meadows
John J. Meadows (WVSB #9442)